

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : **NOTICE OF MOTION**  
v. : **07 Cr. 502 (VM)**  
**Frank Tejada,** :  
Defendant. :  
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**PLEASE TAKE NOTICE**, that upon the annexed declarations of **JENNIFER L. BROWN, Esq.** and **FRANK TEJADA** the undersigned will move this Court, before the Honorable Victor Marrero, United States District Judge for the Southern District of New York, for an order suppressing all physical evidence seized on May 21, 2007 or in the alternative, granting a hearing on this matter, pursuant to Rules 12 and 41 of the Federal Rules of Criminal Procedure, and granting such other and further relief as this Court deems just and proper.

Dated: New York, New York  
October 15, 2007

Respectfully submitted,

**LEONARD F. JOY, ESQ.**  
Federal Defenders of New York

By:

  
**Jennifer L. Brown, ESQ.**

Attorney for Defendant

**Frank Tejada**

52 Duane Street, 10th Floor  
New York, New York 10007  
Tel.: (212) 417-8722

TO: **MICHAEL J. GARCIA, ESQ.**  
United States Attorney  
Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007  
Attn: **Rua Kelly, ESQ.**  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

**AFFIRMATION**

- v - :

**07 CR 502 (VM)**

**Frank Tejada,** :

Defendant. :

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**JENNIFER L. BROWN, ESQ.**, hereby affirms under penalties of perjury pursuant to 28 U.S.C. §1746:

1. I am a staff attorney with the Federal Defenders of New York and trial counsel to the defendant Frank Tejada. I make this affirmation in support of Mr. Tejada's motion to suppress physical evidence seized on May 21, 2007. All statements herein are based on information and belief, unless otherwise indicated.

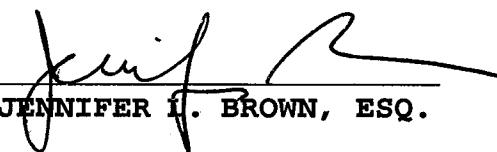
2. On May 21, 2007, Mr. Tejada was in the area of 139<sup>th</sup> street and Hamilton Place. According to the criminal complaint filed in this matter, a confidential informant, after negotiating the purchase of crack cocaine from a codefendant, Mr. Sanchez, observed Mr. Sanchez "instruct[]" Mr. Tejada to go with another codefendant, Mr. Perez, "to get the crack cocaine" for the confidential informant. See Complaint, ¶8(a). According to the complaint, Mr. Tejada accompanied Mr. Perez southbound on Hamilton Place and returned to the area approximately ten minutes later. Id. According to the complaint, when Mr. Perez returned to 139<sup>th</sup> Street with crack cocaine, Mr. Tejada returned to the

area on the opposite side of the street, at which time, Mr. Tejada was arrested. See Complaint, ¶8(b). According to discovery provided by the government, a cell phone was seized from Mr. Tejada at the time of his arrest.

4. Mr. Tejada denies participating in any way in a drug transaction on May 21, 2007. See Tejada Affidavit, ¶2. He denies that he was instructed by Mr. Sanchez to get drugs and denies that he participated in any way in obtaining crack cocaine for the confidential informant. Id. Mr. Tejada asserts that was searched and arrested without his consent after having committed no criminal act. See Tejada Affidavit, ¶3. The search and arrest were therefore unlawful because they were made without probable cause. Because the police officers arrested Mr. Tejada in violation of the Fourth Amendment, all physical evidence subsequently obtained must be suppressed.

**WHEREFORE**, it is respectfully requested that the Court issue an ORDER suppressing the physical evidence obtained in violation of Mr. Tejada's constitutional rights; or in the alternative that the Court set a hearing on this motion pursuant to Federal Rules of Criminal Procedure 12 and 41.

Dated: October 15, 2007

  
JENNIFER I. BROWN, ESQ.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

:

AFFIRMATION

v.

:

07 CR 502 (VM)

**Frank Tejada,**

:

Defendant.

:

-----x

**Frank Tejada** declares under penalty of perjury pursuant to  
28 U.S.C. § 1746:

1. I am the defendant in this criminal case and I make this affirmation in support of a motion pursuant to Federal Rules of Criminal Procedure 12 and 41 to suppress physical evidence in violation of my constitutional rights. Since the purpose of this affirmation is to show that my constitutional rights were violated, my attorney has advised me that it is not necessary to include every detail of the incidents described below, and I have not done so.

2. On or about May 21, 2007, I was in the area of 139<sup>th</sup> Street and Hamilton Place. I was walking on a public street. I had not committed any crime or engaged in any illegal activity. Although I had done nothing illegal, I was arrested by law enforcement officers, who thoroughly searched me at the time of my arrest.

3. After searching me, officers took a cell phone which I had on my person. I was not asked for consent to search my person or remove a cell phone, nor did I give consent to search my person or seize the cell phone.

4. Based on my conversations with my lawyer, I believe my rights under the United States Constitution were violated.

**WHEREFORE**, it is respectfully requested that this Court enter an order suppressing all physical evidence seized from my person on May 21, 2007.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: New York, New York  
October 15, 2007

Frank Tejada  
Frank Tejada